

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

CHARLES ALAN CHALENOR	§	PLAINTIFF
	§	
	§	
	§	
v.	§	Civil No. 1:19cv110-HSO-JCG
	§	
	§	
JACKSON COUNTY, <i>et al.</i>	§	DEFENDANTS

**ORDER ADOPTING MAGISTRATE JUDGE'S [44] REPORT AND
RECOMMENDATION AND DISMISSING CASE WITHOUT PREJUDICE**

This matter comes before the Court on the Report and Recommendation [44] of United States Magistrate Judge John C. Gargiulo, entered in this case on March 4, 2020. Based upon the Magistrate Judge's review of the record and relevant legal authority, he recommended that this case be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b) for Plaintiff's failure to abide by the Court's Orders and to advise the Court of a change of address. R. & R. [44] at 3. Plaintiff has not filed any objection to the Report and Recommendation. For the reasons that follow, the Court finds that the Report and Recommendation [44] should be adopted in its entirety and that this case should be dismissed without prejudice.

I. BACKGROUND

Plaintiff Charles Alan Challenor ("Plaintiff") filed a pro se Complaint [1] against Defendant Jackson County Adult Detention Center (the "ADC") on February 27, 2019. Plaintiff is proceeding *in forma pauperis*.

On February 28, 2019, the Magistrate Judge entered an Order [3] providing Plaintiff with certain information and warning that his failure to advise the Court of a change of address would be deemed a purposeful delay and contumacious act and could result in this case being dismissed *sua sponte*, without prejudice and without further written notice. Order [3] at 2. The Magistrate Judge repeated this same warning in subsequent Orders [7], [15]. *See* Order [7] at 2; Order [15] at 2. The Magistrate Judge also warned Plaintiff that his failure to comply with any Order of this Court may likewise result in dismissal of this case. *See* Order [8] at 2; Order [15] at 2.

Based upon Plaintiff's responses to questions posed by the Magistrate Judge, on July 10, 2019, the Magistrate Judge ordered that Jackson County and Dr. Coulter be added as Defendants, *see* Order [12] at 1, and on July 31, 2019, the Court dismissed the ADC because it was not a proper party under Mississippi law, *see* Order [14] at 1-2. Orders of the Court mailed to Plaintiff began being returned to the Clerk of Court as undeliverable. *See* Envelope [13] at 1; Envelope [17] at 1; Envelope [18] at 1; Envelope [32] at 1. Defendants also filed Notices [24], [25], [27], [33] of returned mail.

Jackson County filed a Motion [34] to Dismiss, in which Dr. Coulter joined [37], followed by a Motion [37] for Summary Judgment for Plaintiff's Failure to Exhaust Administrative Remedies. Jackson County has filed Notices [39], [40] informing the Court that the mail containing the two Motions [34], [37] and supporting Memoranda [35], [38] were returned to sender. The first envelope was

marked “NO LONGER AT THIS FACILITY,” Envelope [39-1] at 1, while the second bore a note that stated, “INMATE HAS NOT BEEN HERE SINCE 4/18/19,” Envelope [40-1] at 1.

On January 3, 2020, the Magistrate Judge entered an Order [41] to Show Cause requiring Plaintiff to file a response to the Motions [34], [37] on or before January 27, 2020, and to show cause why this case should not be dismissed for failure to prosecute and abide by the Court’s Orders. *See* Order [41] at 2. When no response was forthcoming, the Magistrate Judge entered a Second Order [42] Show Cause on February 6, 2020, requiring Plaintiff to respond to the Motions [34], [37] on or before February 27, 2020, and to show cause why this case should not be dismissed for failure to prosecute and abide by the Court’s Orders. *See* Order [42] at 2. Again, Plaintiff did not respond. The envelope containing the Second Order [42] Show Cause was returned with a note stating, “NO LONGER AT THIS FACILITY.” Envelope [43] at 1. To date, Plaintiff has not responded to the Court’s Show Cause Orders [41], [42].

On March 4, 2020, the Magistrate Judge entered a Report and Recommendation [44], recommending that this case be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for Plaintiff’s failure to prosecute and to abide by the Court’s Orders. R. & R. [44] at 3. The Report and Recommendation [44] was mailed to Plaintiff on March 4, 2020, via certified mail return receipt requested. The envelope was returned to the Clerk marked “RETURN TO SENDER. ATTEMPTED – NOT KNOWN. UNABLE TO FORWARD,” Envelope

[45] at 1.

Any objection to the Magistrate Judge's Report and Recommendation [44] was due within fourteen (14) days of service. L.U. Civ. R. 72(a)(3). To date, Plaintiff has not filed any objection to the Magistrate Judge's Report and Recommendation [44], and the time for doing so has passed.

II. DISCUSSION

Where no party has objected to a magistrate judge's report and recommendation, a court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) ("a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made"). In such cases, the court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. Plaintiff has not kept the Court apprised of his mailing address, even after being warned several times that failure to do so would be deemed a purposeful delay and contumacious act that may result in dismissal. See, e.g., Order [3] at 2; Order [7] at 2; Order [15] at 2. Such inaction represents a clear record of delay or contumacious conduct by Plaintiff. It is apparent to the Court that Plaintiff no longer wishes to pursue this case.

The Court will adopt the Magistrate Judge's Report and Recommendation

[44] as the opinion of this Court, and this civil action will be dismissed without prejudice for Plaintiff's failure to prosecute and to abide by the Court's Orders.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [44] of United States Magistrate Judge John C. Gargiulo, entered in this case on March 4, 2020, is **ADOPTED** in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, this civil action is **DISMISSED WITHOUT PREJUDICE** for Plaintiff's failure to prosecute and to abide by the Court's Orders. A separate final judgment will be entered pursuant to Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 7th day of April, 2020.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE